



Ohio Bureau of Workers' Compensation Comprehensive Study

Pricing Process: Handicap Reimbursement Program
Report 3.3

Deloitte Consulting LLP
Group 3
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Audit • Tax • Consulting • Financial Advisory •

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Executive Summary

Introduction

The Americans With Disabilities Act (ADA) has made the original purpose of the Handicap Reimbursement Program largely irrelevant. Today the program is primarily used as a cost-containment mechanism by many employers and a competitive/marketing tool by Third Party Administrators. The program costs BWC approximately \$2 million per year in charges to the Surplus Fund/overhead expenses and does not demonstrate a quantifiable benefit to the average policyholder. While BWC has not made substantive program revisions due to the implementation of the ADA, 21 states have discontinued their Second Injury Funds since inception of the ADA and many others are contemplating such an action. Arthritis accounts for approximately 97% of the reimbursed losses and, as per BWC interviews is a difficult condition to verify relative to the degree of arthritis and its relationship to the allowed condition.

Conclusions

Findings

- The definition of “handicap” is objective in that the definition lists specific medical conditions, however a great deal subjectivity might still remain in diagnosing some of the conditions (including the primary condition of arthritis).
- Arthritis claims constitute greater than 97% of Handicap Reimbursement claims.
- The Handicap Reimbursement Program provides economic relief to employers who experience claims from previously injured workers, but Ohio BWC loss data does not support this as a stand-alone rationale for maintaining the program.
- The Handicap Reimbursement Program is utilized as a means of cost reduction for employers and TPAs to make an employer eligible for group rating.

Recommendations

Our primary conclusion is that the Handicap Reimbursement Program should be discontinued for the following reasons:

- The ADA makes the program’s original purpose largely obsolete;
- The cost-containment benefits of participating employers can be distributed across all employers in the form of lower premiums or increased funding of prospective loss control;
- BWC would save departmental overhead expenses;
- The dominance of less verifiable arthritis cases makes many of the reimbursements arbitrary;
- There was no evidence found that employers with handicapped workers require the provided economic relief; and
- Employers will have a reduced administrative burden allowing them to focus on prospective loss control.

The Deloitte Consulting team appreciates the time and effort dedicated by BWC constituents over the course of our discovery to help us understand the Handicap Reimbursement program.

The Situation

Task Background

RFP Task Reference	RFP Task Description	Task Category
Section 5.1.2 #17, page 13	Evaluate the effectiveness of the handicap reimbursement program to reward employers that hire and retain employees with pre existing conditions. This evaluation should determine if the program is cost effective and compare the program to other states.	Underwriting

Note on Terminology

Most states have a mechanism in place similar to that of Ohio's Handicap Reimbursement Program to encourage the hiring and retention of previously injured workers. While there are some different names for these mechanisms (Second Injury Fund, Subsequent Injury Fund, Special Injury Fund etc.), for the purposes of this document the term Second Injury Fund (SIF) refers to the mechanism in any state that has a purpose similar to that of Ohio's Handicap Reimbursement Program.

The objective of the Handicap Reimbursement Program is to encourage the employment and retention of handicapped employees. From post World War II through the 1990's most states had programs in place with a purpose similar to that of Ohio's Handicap Reimbursement Program. Although most other states refer to their respective programs with a different name (i.e. Second / Subsequent / Special Injury Fund) the goals are still the same. For the purposes of this document, the term Second Injury Fund (SIF) will be used to refer to, in general, the respective program in each state. Due to the American Disabilities Act (ADA) of 1990, the large financial costs of such programs, and the challenge of determining the relationship between a current injury and previous injury, starting in 1990 several states began to close out their Second Injury Funds, the most recent being New York in 2007.

Methodology

Task 17 includes an evaluation of the BWC Handicap Reimbursement Program, which provides financial incentives for employers to hire and retain handicapped employees by removing such claims from an employer's experience. To evaluate the effectiveness of this program we considered the following:

- Effectiveness of program to reward employers that hire and retain employees with pre-existing conditions
- Cost effectiveness and administration of the program
- Comparison with other states' programs

To conduct our review and analysis of BWC's Handicap Reimbursement program we held interviews with BWC staff, reviewed data received from BWC in response to our data request, and researched other states' Second Injury Funds via the web and phone interviews.

Primary Constituents

- **Handicapped and/or previously injured Ohio Workers**
- **BWC Insured Employers**
- **BWC Group Rating Plan Employers**
- **Third Party Administrators**
- **Self-Insured Employers**
- **BWC**
 - Legal
 - Claims
 - Chief Actuary and Actuarial Department
 - Statutory Surplus Fund
- **Governor's Office**
- **State Legislature**
- **Medical Community**

Information and Data Gathered

Interviews

To conduct our review and analysis of BWC's Handicap Reimbursement program we held interviews with BWC staff, reviewed data received from BWC in response to our data request, and researched other states' Second Injury Funds via the web and phone interviews.

- Administrator/CEO
- Handicap Reimbursement Program Staff
- Actuarial Supervisor – Actuarial Department
- Assistant Director – Actuarial Department

Information/Data Request

The following information was reviewed during the course of this project:

- BWC Website - <https://www.ohiobwc.com/downloads/blankpdf/handicap.pdf>
- Reference materials received from BWC regarding the Handicap Reimbursement Program
- Process steps for processing handicap reimbursement submissions
- Clarifications and additions to rules and procedures available on BWC web site
- Financial impact data – overhead costs and charges to Insurance Fund
- Phone interviews with and information collected from other state funds or labor and industry departments

Review and Analysis

Benchmarking and Research

Our benchmarking and research consists of 3 main areas: 1) the background and history of the Americans with Disabilities Act (ADA); 2) the characteristics of Second Injury Funds (SIF's) in other states; and 3) the characteristics of handicap worker programs in North Dakota and Washington. We researched the ADA because of its impact on other states' decisions to terminate SIF's. We researched the characteristics and statuses of other states' SIF's as there are only 2 other states (ND and WA) that offer a program similar to that of Ohio. Although the operation of other states' SIF's are somewhat different than that of the programs in Ohio, North Dakota, and Washington, these other states' SIF's are still a valid point of comparison because of the similar primary purpose.

Considering the Americans With Disabilities Act (ADA)

General Background of the ADA and Impact on SIF's

The closures of SIF's began in 1990 with Oregon, catalyzed by the American Disabilities Act (ADA) passed in the same year. Although Ohio does not have a SIF, the Handicap Reimbursement program is still affected by the ADA in a similar way. From a legal perspective there are several items to consider with regard to the impact of the ADA on SIF's:

Consideration	Significance
The ADA "is a prohibition against discrimination"	These statements define the similar yet distinct purposes of the ADA and SIF's. The statements suggest that the ADA is designed to prevent a negative action, i.e. discrimination, whereas SIF's are in place to encourage positive behavior, i.e. hiring and retention of previously injured workers.
A Second Injury Fund "compensates an employer for extraordinary costs associated with the undertaking of <i>knowingly</i> employing a person with disabilities"	
Many conditions that would be considered a disability for a Second Injury Fund would not satisfy the requirements of a disability according to the ADA	Even if the purposes of the ADA and SIF's were the same, the breadth of impact of the ADA is less than that of SIF's because of a stricter definition of disabled.
Statistics as of March 31, 2004 "show that complaints alleging violations of the ADA are unsuccessful in 96% of the cases"	It is unlikely that a job applicant will succeed in suing an employer for violating the ADA.

Source: <http://www.secondinjuryfunds.com/ADA%20Labor%20Atty.pdf>

A Summary of States with Inactive Second Injury Funds

As per the list below, 21 states have discontinued their Second Injury Funds.

Alphabetical	
Alabama	1992
Arkansas	2007
Colorado	1993
Connecticut	1995
District of Columbia	1998
Florida	1997
Georgia	2004
Kansas	1993
Kentucky	1996
Maine	1992
Minnesota	1995
Nebraska	1997
New Mexico	1996
New York	2007
Oklahoma	2000
Oregon	1990
Rhode Island	1998
South Dakota	1999
Utah	1994
Vermont	1999
West Virginia	2003

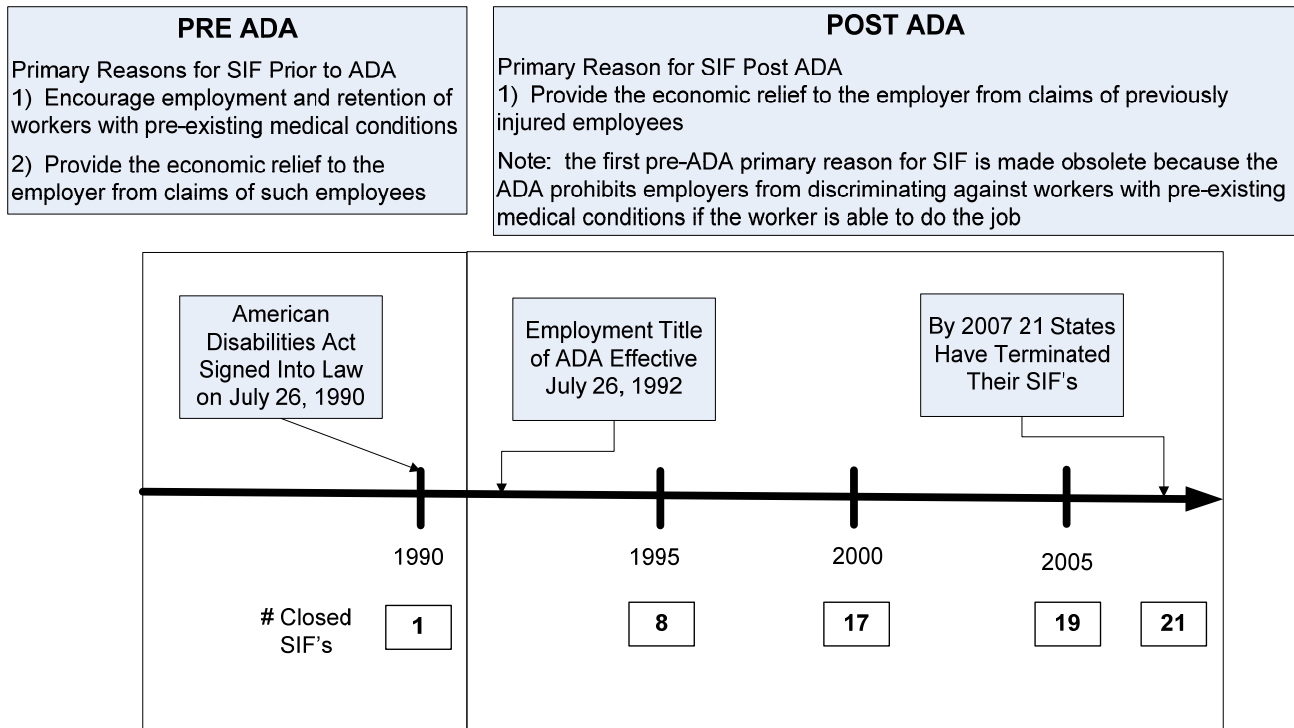
Chronological	
Oregon	1990
Maine	1992
Alabama	1992
Kansas	1993
Colorado	1993
Utah	1994
Minnesota	1995
Connecticut	1995
New Mexico	1996
Kentucky	1996
Nebraska	1997
Florida	1997
Rhode Island	1998
District of Columbia	1998
Vermont	1999
South Dakota	1999
Oklahoma	2000
West Virginia	2003
Georgia	2004
New York	2007
Arkansas	2007

Note:

The following states have never had a program similar to a Second Injury Fund: Wyoming, Delaware, and Wisconsin.

Timeline and Impact Overview of the ADA

This diagram depicts the correlation between creation of the ADA and the closing of Second Injury Funds. The first SIF closure occurred in the year in which the ADA was signed into law and eight SIF's were closed within three years of the ADA's Employment Title effective date.



Ohio BWC and the ADA

As with most states' SIF's, the Ohio BWC Handicap Reimbursement Program was created over 50 years ago to encourage the hiring and retention of workers with pre-existing conditions. States implemented Second Injury Funds to offset large claims costs associated with previously injured employees. The ADA, however, antiquates the SIF because it prevents employers from discriminating against workers with pre-existing conditions.

To date, the Ohio BWC's only response to the ADA has been to remove the requirement that workers disclose previous injuries to prospective employers. While this addresses potential legal issues associated with the ADA, it leaves the program vulnerable to misuse. Currently, the Handicap Reimbursement program is being used as a cost-containment tool with which employers can eliminate "handicapped" workers' claims from their experience on a retroactive basis. Additionally, it has become common for Third Party Administrators (TPA's) to use the program as a competitive advantage.

Other States' Second Injury Funds

A Summary of States with Active Second Injury Funds

As indicated below, about half of all states still have either a SIF or other program in place similar to that of Ohio to encourage the hiring and retention of handicapped employees. Many of these states are evaluating their program and some have concluded that the SIF should be terminated. In some instances, however, states have not been able to terminate the SIF due to political resistance.

The states with the most similar programs to that of Ohio are North Dakota and Washington.

Name of Fund or Provision	States
Handicap Reimbursement	Ohio
Preferred Worker Program	North Dakota, Washington
Second/Subsequent Injury Fund	Alaska, California, Idaho, Illinois, Indiana, Iowa, Maryland, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas, Virginia
Other	Hawaii, Louisiana, Massachusetts, Michigan

Comparison of Definition of “Handicapped” or Previous Injury

One of the key decision points in the handicap reimbursement process is determining whether or not the injured worker was handicapped or injured prior to the second injury, and whether that prior injury contributed to the severity of the second injury. Although Ohio BWC provides a relatively objective list of handicap conditions, the determination of whether an employee has such a condition, such as arthritis, is often much more subjective. Some states have similarly objective definitions, while some states have more subjective descriptions which are subject to greater interpretation.

States with a More Objective Description of Previous Injury

State	Definition of “Handicapped” or Previous Injury
<ul style="list-style-type: none">Ohio	<p>Employee must suffer from one of 25 medical conditions and the employee's condition must be constituted as handicapped within the meaning of the law:</p> <ol style="list-style-type: none">1. Epilepsy2. Diabetes3. Cardiac disease4. Arthritis5. Amputated foot, leg, arm or hand6. Loss of sight of one or both eyes or partial loss of uncorrected vision of more than 75 percent bilaterally7. Residual disability from poliomyelitis8. Cerebral palsy9. Multiple sclerosis10. Parkinson's disease11. Cerebral vascular accident12. Tuberculosis13. Silicosis14. Psycho-neurotic disability following treatment in a recognized medical mental institution15. Hemophilia16. Chronic osteomyelitis17. Ankylosis of joints18. Hyper Insulinism19. Muscular dystrophies20. Arterio-sclerosis21. Thrombo-phlebitis22. Varicose veins23. Cardiovascular and poliomyelitis pulmonary diseases of a firefighter employed by municipal corporation or township as a regular member of a lawfully constituted fire department24. Coal miners' pneumoconiosis25. Disability with respect to which an individual has completed a rehabilitation program

States with a More Objective Description of Previous Injury - continued

State	Definition of "Handicapped" or Previous Injury
Florida	<ol style="list-style-type: none"> 1. Epilepsy 2. Diabetes 3. Cardiac disease 4. Amputation of foot, leg, arm, or hand 5. Total loss of sight of one or both eyes or a partial loss of corrected vision of more than 75 percent bilaterally 6. Residual disability from poliomyelitis 7. Cerebral palsy 8. Multiple sclerosis 9. Parkinson's disease 10. Meniscectomy 11. Patellectomy 12. Ruptured cruciate ligament 13. Hemophilia 14. Chronic osteomyelitis 15. Surgical or spontaneous fusion of a major weight-bearing joint 16. Hyperinsulinism 17. Muscular dystrophy 18. Thrombophlebitis 19. Herniated intervertebral disk 20. Surgical removal of an intervertebral disk or spinal fusion 21. One or more back injuries or a disease process of the back resulting in disability over a total of 120 or more days, if substantiated by a doctor's opinion that there was a preexisting impairment to the claimant's back 22. Total deafness 23. Mental retardation provided the employee's intelligence quotient is such that she or he falls within the lowest 2 percentile of the general population. However, it shall not be necessary for the employer to know the employee's actual intelligence quotient or actual relative ranking in relation to the intelligence quotient of the general population. 24. Any permanent physical condition which, prior to the industrial accident or occupational disease, constitutes 20-percent impairment of a member or of the body as a whole. 25. Obesity provided the employee is 30 percent or more over the average weight designated for her or his height and age in the Table of Average Weight of Americans by Height and Age prepared by the Society of Actuaries using data from the 1979 Build and Blood Pressure Study. 26. Any permanent physical impairment as defined in s. 440.15(3) which is a result of a prior industrial accident with the same employer or the employer's parent company, subsidiary, sister company, or affiliate located within the geographical boundaries of this state.

States with a More Objective Description of Previous Injury - continued

State	Definition of "Handicapped" or Previous Injury
Georgia	<ol style="list-style-type: none"> 1. Epilepsy 2. Diabetes 3. Arthritis (which is an obstacle or hindrance to employment or reemployment. 4. Amputated foot, leg, arm or hand 5. Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than 75 percent bilaterally 6. Residual disability from poliomyelitis 7. Cerebral palsy 8. Multiple sclerosis 9. Parkinson's disease or disorders 10. Cardiovascular disease 11. Tuberculosis 12. Mental retardation provided the employee's intelligence quotient (IQ) is such that he or she falls within the lowest two percent of the general population; provided, however, that it shall not be necessary for the employer to know the employee's actual IQ or actual relative ranking in relation to the IQ of the general population. 13. Psychoneurotic disability following confinement for treatment in a recognized medical or mental institution for a period in excess of six months. 14. Hemophilia 15. Sickle cell anemia 16. Chronic osteomyelitis 17. Ankylosis of major weight bearing joints 18. Hyperinsulism 19. Muscular dystrophy 20. Total occupational loss of hearing, as defined in Code Section 34-9-264 21. Compressed air sequelae 22. Ruptured intervertebral disc 23. Any permanent condition which, prior to the occurrence of the subsequent injury, constitutes a 20 percent impairment of a foot, leg, hand, or arm, or the body as a whole.
Illinois	<p>If a worker who had previously incurred the complete loss of a member or the use of a member (one hand, arm, foot, leg, or eye) is injured on the job</p>

States with a More Objective Description of Previous Injury - continued

State	Definition of "Handicapped" or Previous Injury
Louisiana	<ol style="list-style-type: none"> 1. Epilepsy 2. Diabetes 3. Cardiac disease 4. Arthritis 5. Amputated foot, leg, arm, or hand or total loss of use thereof 6. Loss of sight of one or both eyes or a partial loss of uncorrected vision of more than seventy-five percent bilaterally 7. Residual disability from poliomyelitis 8. Cerebral palsy 9. Multiple sclerosis 10. Parkinson's disease 11. Cerebral vascular accident 12. Tuberculosis 13. Silicosis 14. Psychoneurotic disability following treatment in a recognized medical or mental institution 15. Hemophilia 16. Chronic osteomyelitis 17. Ankylosis of joints 18. Hyperinsulinism 19. Muscular dystrophy 20. Arteriosclerosis 21. Thrombophlebitis 22. Varicose veins 23. Heavy metal poisoning 24. Ionizing radiation injury 25. Compressed air sequelae 26. Ruptured intervertebral disc 27. Hodgkin's disease 28. Brain damage 29. A spinal fusion or the surgical removal of an intervertebral disc 30. Mental retardation, provided the diagnosis of mental retardation
Michigan	<p>Employees must be certified prior to hire. To be eligible, a worker must:</p> <ul style="list-style-type: none"> - have a back, heart, epileptic, or diabetic condition, - be unemployed at the time of certification, - not have a current offer of employment, and - meet one of the following three criteria: <ul style="list-style-type: none"> - was turned down for a job for disability-related reasons, - is unable to return to work for a previous employer for disability-related reasons, or - is a current client of either MRS or the Michigan Commission for the Blind.
North Carolina	<p>If an employee has previously incurred permanent partial disability through the loss of a hand, arm, foot, leg, or eye, and by subsequent accident incurs total permanent disability through the loss of another member, the employer's liability is for the subsequent injury only.</p>

States with a More Objective Description of Previous Injury - continued

State	Definition of "Handicapped" or Previous Injury
Tennessee	Employee must have "previously sustained a permanent physical disability." Although courts rarely define "permanent disability," a permanent physical disability can be either a partial disability as enumerated in Tennessee Code Annotated section 50-6-207(3) or a total disability as defined in Tennessee Code Annotated section 50-6-207(4)(B). Further, an analysis of Tennessee case law dealing with application of section 50-6-208(a) reveals that an award or finding of some percentage of permanent disability will satisfy the "previous permanent physical disability" requirement. In the case where an employee comes to work with a non-work related permanent disability but there has been no assessment of the extent of the disability before the employee sustains a work related injury that in conjunction with the prior non-work related injury renders the employee permanently and totally disabled, the trial court is supposed to make a finding based upon expert testimony of the extent of the prior permanent disability before the second injury.
Virginia	For the purpose of this chapter, disability shall mean: (i) the partial or total loss or loss of use of an arm, hand, leg, foot, eye, finger, toe, or any combination of two or more thereof in an industrial accident and (ii) actual incapacity for work at the claimant's average weekly wage.

States with a More Subjective Description of Previous Injury

State	Definition of “Handicapped” or Previous Injury
Alaska	To receive reimbursement, the employer must demonstrate that the employee had a qualifying pre-existing condition that the employee was hired or retained with full knowledge of this condition, that a subsequent injury when combined with the pre-existing condition resulted in a condition substantially greater than the subsequent injury alone, and that 104 weeks of compensation payments have been made.
Arizona	When an employee has a non-industrial, pre-existing medical condition (set forth in the statute) and suffers an industrially related injury and meets the other criteria of the statute, or an employee has had a scheduled injury and suffers a subsequent scheduled injury
Arkansas	Requirement for Second Injury Fund Reimbursement: The employee has suffered a compensable injury at the present place of employment, and that injury has produced permanent anatomical impairment. Prior to that injury, the employee must have incurred a permanent partial disability or impairment, and the prior disability or impairment must combine with the recent compensable injury to produce the current disability status. That combination must be greater than the disability or impairment from the last injury considered alone and of itself.
California	"employee has a previous permanent disability or impairment"
Missouri	The prior disability must be "of such seriousness as to constitute a hindrance or obstacle to employment."
Montana	A person with a disability is defined in statute as a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining re-employment if the employee should become unemployed, and is based on such factors as the person's age, education, training, experience and employment rejection.
Nebraska	To qualify for second injury benefits, an employee must have a prior serious disability documented by the employer through written records when the employee is hired or retained in the employment.
Nevada	As used in this section, "permanent physical impairment" means any permanent condition, whether congenital or caused by injury or disease, of such seriousness as to constitute a hindrance or obstacle to obtaining employment or to obtaining reemployment if the employee is unemployed. For the purposes of this section, a condition is not a "permanent physical impairment" unless it would support a rating of permanent impairment of 6 percent or more of the whole man if evaluated according to the American Medical Association's Guides to the Evaluation of Permanent Impairment as adopted and supplemented by the Division pursuant to NRS 616C.110.
New Hampshire	At the time of hire - or as soon after hire as the information becomes known to you make note in writing of your knowledge of the employee's impairment. In the event of a Second Injury Fund claim in the future, this written record will need to be produced as evidence that you knew of the worker's impairment prior to the subsequent injury. The written record can take any form you wish (e.g. pre-placement physical examination report, a memorandum to the personnel file, interview notes signed and dated by the interviewer, or a letter from a rehabilitation counselor who knew the worker) as long as: the information is recorded in writing; the record clearly identifies the employer, employee and the date that the record was created; and the record presents information about the worker's impairment and the limitations caused by the impairment.

States with a More Subjective Description of Previous Injury - continued

State	Definition of “Handicapped” or Previous Injury
North Dakota	Worker must have sustained a compensable work injury in North Dakota, resulting in an obstacle in their ability to return to work; Not been released for, nor have returned to "regular" work; Not refused on offer of appropriate employment with the employer of injury
Washington	Worker must have an open claim with L&I or a claim that was closed within 60 days, have a need to change employers to obtain suitable work, be recommended for Preferred Worker Status by a vocational counselor and be ready to seek work or “on-the job training with a “for-profit” employer

Comparison of Benefits to Employers

Ohio's mechanism for encouraging the hiring and retention of previously injured workers is to remove part of the related claim from the employer's experience. Other states have different mechanisms for defraying the economic impact of previously injured workers' claims:

States	Reimbursement Mechanism	Description / Additional Detail
Ohio	Adjustment to Experience	Losses resulting from the injuries of handicapped employees are excluded from the employer's experience, with some limitations based on a maximum amount allowed to be excluded.
North Dakota	Premium Exemption, Wage Reimbursement, Claim Costs Exemption, Worksite Modification Reimbursement	Employers are not charged premium on the Preferred Worker's (PW) salary for up to three years, 50% of the PW's wages are reimbursed for the first 6 months of employment, claims associated with the PW will not be charged to the employer's experience for up to 3 years, and certain worksite modifications may be reimbursed
Washington	Claim Cost Relief and Premium Relief	Employers are not charged for any rating penalties or injury costs as long as the injury occurs within the 36 month certification period. Employers are also exempt from Accident Fund and Medical Aid premiums during the 36 month period.
Alaska Connecticut Michigan Montana	Employer not liable after payments made for a certain period of time	Multiple states have rules and laws limiting an employer's responsibility for an injured worker's claims, after the employer has made payments for a period of 52 or 104 weeks.
Colorado	Second Injury Fund begins making payment after employer has paid a specified amount of damages	If the claimant's injury is a listed occupational disease and the respondent / carrier has paid their required \$10,000 liability, the Second Injury Fund is liable for medical benefits.
Arizona Arkansas California Georgia Idaho Illinois Nebraska	Other means of sharing of costs between employer and the Second Injury Fund	Many other states have rules regarding reimbursement of claims costs for previously injured workers that do not specifically fall into the above categories

Comparison of Ohio's Handicap Reimbursement Program with North Dakota and Washington's Preferred Worker Programs

The North Dakota and Washington Preferred Worker programs are similar to Ohio's Handicap Reimbursement Program because they provide financial incentives in the form of reduced premiums. This is different than most SIF's which compensate employers by reimbursing them for large losses from the claims of previously injured workers.

Despite the similarities between North Dakota, Washington and Ohio, there are some differences. North Dakota and Washington require previously injured workers to identify themselves to employers upon hiring and benefits are limited to 3 years from the hire date. Ohio, on the other hand, has no such requirement for identification and there is no time limit on reduced premium benefits.

	Handicap Reimbursement Program Ohio BWC	Preferred Worker Program North Dakota WSI	Preferred Worker Program Washington L&I
Types of Handicaps Covered	Employee must suffer from one of 25 medical conditions and the employee's condition must be constituted as handicapped within the meaning of the law	Worker must have sustained a compensable work injury in North Dakota, resulting in an obstacle in their ability to return to work; Not been released for, nor have returned to "regular" work; Not refused on offer of appropriate employment with the employer of injury	Worker must have an open claim with L&I or a claim that was closed within 60 days, have a need to change employers to obtain suitable work, be recommended for Preferred Worker Status by a vocational counselor and be ready to seek work or "on-the job training with a "for-profit" employer
Method of Identifying Handicapped Workers	Handicapped workers are identified after second injury has occurred	Employers can search the online Preferred Worker List for potential employees, or employees may seek jobs independently and present their Preferred Worker card to a new employer at their own discretion	Upon receiving status as a "Preferred Worker", injured workers receive a certification number which is good for 36 months which are then submitted to employers upon hiring
Application Requirements	Employers apply for claim reimbursement after second injury occurs within 5-6 years of the date of injury. Employer has to show the handicapped condition pre-existed as of the date of injury, and that it either caused the claim, or contributed to increased costs or a delay in recovery	Employer submits an inquiry form indicating that they are interested in hiring a "Preferred Worker". Form includes information about the employer and the proposed job opportunity.	Employer submits an "intent to hire preferred worker" form within 60 days of hire which includes a description of the job and the preferred worker's certification number
Types of Benefits	Second Injury claim reimbursement is based on the amount of the claim attributed to an eligible previous injury, a percentage of the claim is paid through the surplus fund and is excluded from the employer's experience modification	Employers are not charged premium on the Preferred Worker's (PW) salary for up to three years, 50% of the PW's wages are reimbursed for the first 6 months of employment, claims associated with the PW will not be charged to the employer's experience for up to 3 years, and certain worksite modifications may be reimbursed	Employers are not charged for any rating penalties or injury costs as long as the injury occurs within the 36 month certification period. Employers are also exempt from Accident Fund and Medical Aid premiums during the 36 month period.

Analysis – BWC Specific Data

DEFINITIONS

Handicap Claim Payment: the total incurred loss for a claim that was approved for handicap reimbursement, including both the charge to the surplus fund and the charge to the employer's experience.

Handicap Surplus Charge: the portion of a claim that was approved for handicap reimbursement that is charged to the surplus fund

Municipalities: A grouping created for the purposes of this study which includes employers categorized as cities, counties, townships, and villages.

Figure 1 shows the distribution of handicap claim payments by handicap type. Only the top 5 handicap types are included in the graph as they represent over 98% of handicap claim payments. Arthritis is by far the most common type of handicap associated with second injuries and this trend is consistent across industries.

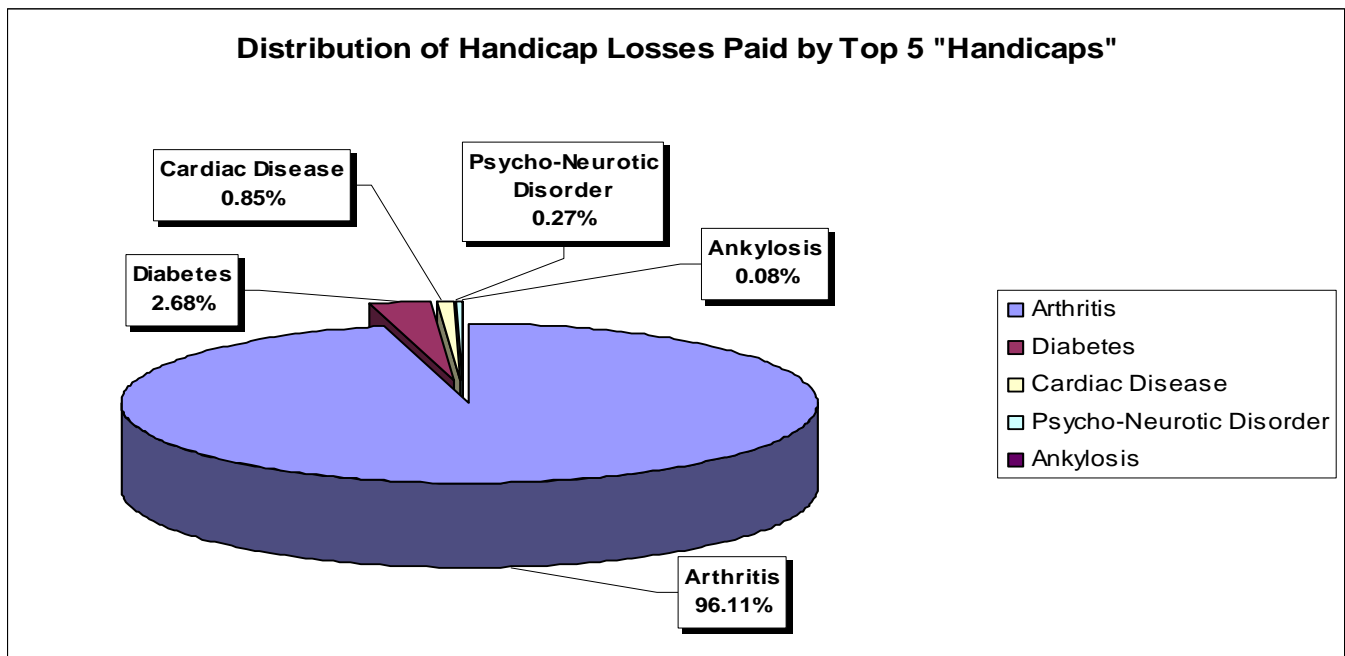


Figure 1

Figure 2 shows how the lag between injury date and handicap reimbursement date has progressed in calendar years 2003-2007. This chart shows that the number of handicap claims is steadily increasing each year and a larger percentage of handicap reimbursements are being paid more than 2 years after the injury date.

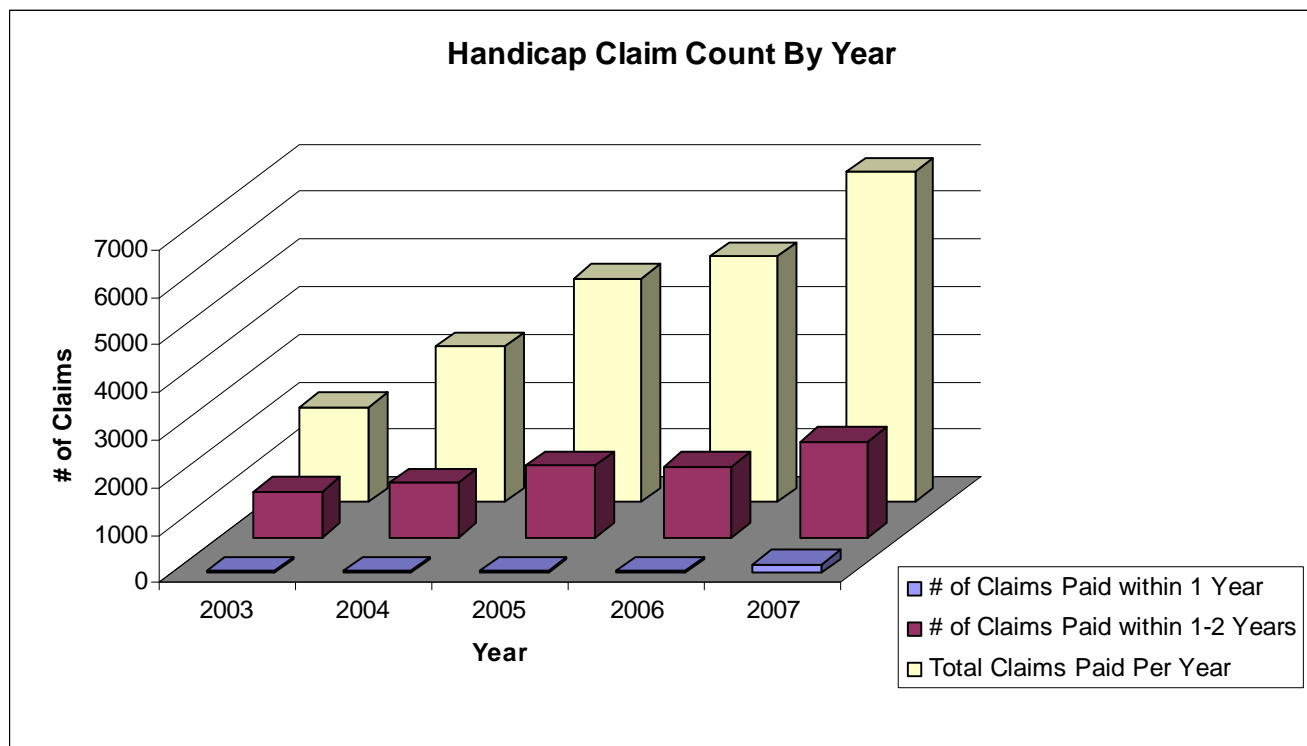


Figure 2

Figure 3 shows a distribution of average handicap surplus charge by payroll size. This chart shows that the average charge to surplus is the highest for employers with payroll in the \$50 million to \$100 million range. One observation made from the underlying data not apparent from the chart is that of approximately 27,000 handicap claims, 24,478 of them had zero dollars charged against surplus.

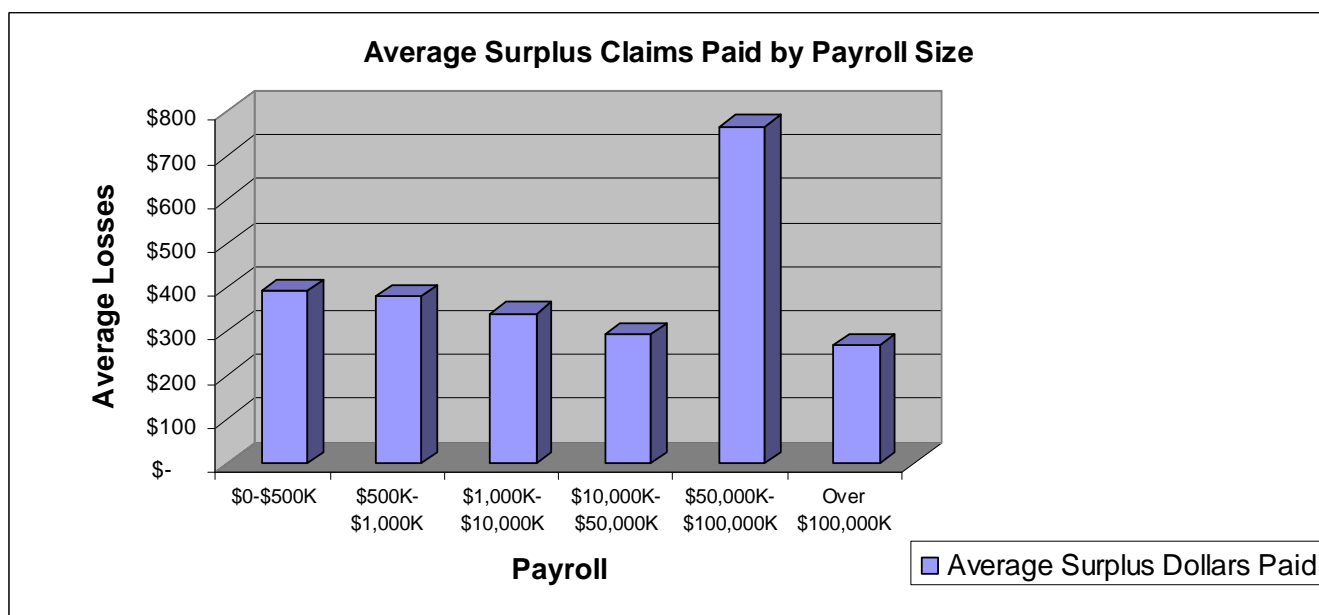


Figure 3

Figure 4 shows the distribution of handicap claim payments by industry. We included the top 5 industries based on handicap claim payments. The Service and Manufacturing Industries have the largest single shares of payments.

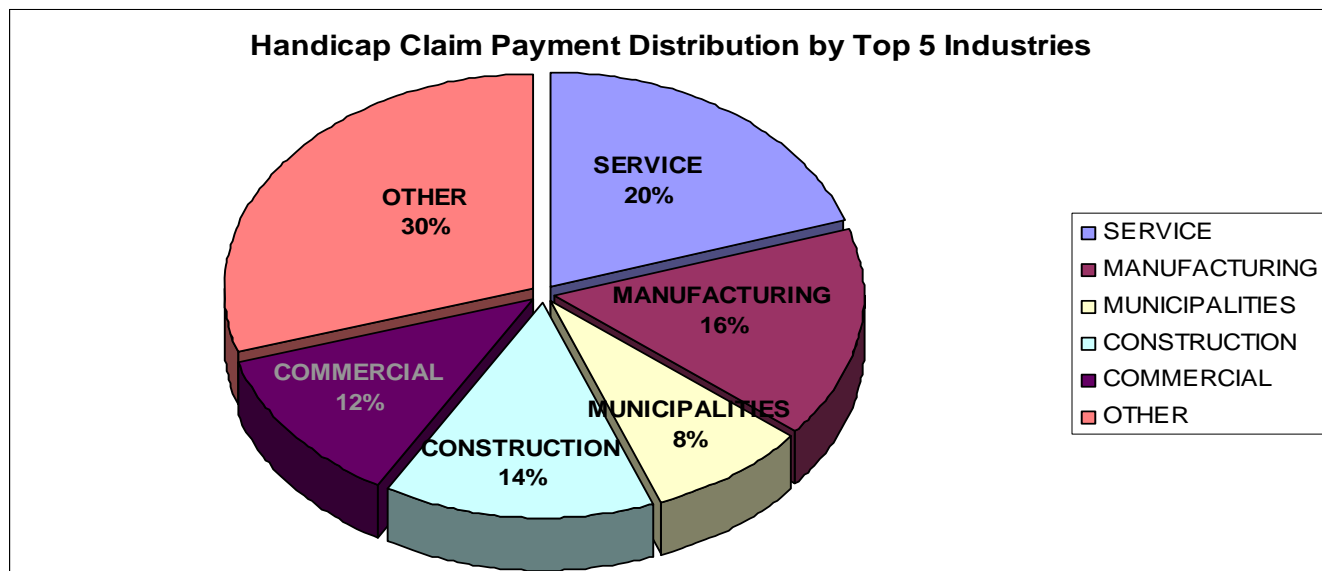


Figure 4

Conclusions






Findings

- The definition of “handicap” is objective in that the definition lists specific medical conditions, however a great deal of subjectivity might still remain in diagnosing some of the conditions (including the primary condition of arthritis).
- Arthritis claims constitute greater than 97% of Handicap Reimbursement claims.
- The only adjustment Ohio BWC has made as a result of the enactment of the ADA has been to eliminate the requirement that employees disclose pre-existing conditions to prospective employers.
- It does not appear that Ohio BWC has thoroughly evaluated the strategic need for the Handicap Reimbursement Program based upon the impact of the Americans with Disabilities Act.
- Based on a discussion with BWC legal staff, in some instances an employee is documented as having arthritis as a pre-existing condition; however, the TPA and/or employer do not objectively establish the impact of the pre-existing arthritis on the industrial injury.
- The Ohio BWC administration of the Handicap Reimbursement Program absorbs approximately 13-17% of the program’s annual expenditures.
- The Handicap Reimbursement Program provides economic relief to employers who experience claims from previously injured workers, but Ohio BWC loss data does not support this as a stand-alone rationale for maintaining the program.
- Ohio, Louisiana, and Georgia are the only states found in the research that explicitly list arthritis as a qualifying pre-existing condition. Louisiana does not qualify the arthritis requirement, but Georgia does by requiring that the type and severity of arthritis be such that it is a “hindrance to employment or re-employment”. Ohio has a similarly worded qualification.
- North Dakota and Washington Preferred Worker Programs provide more benefits, but for a shorter period of time – for the first three years of employing a previously injured worker, the employer does not pay premium for that worker’s wages and the employer’s experience also does not reflect claims from such workers. But after three years, the employer must start paying premium for the employee’s coverage and such losses will be reflected in the employer’s experience.
- The Handicap Reimbursement Program is utilized as a means of cost reduction for employers and TPA’s to make an employer eligible for group rating.
- For the more common types of handicap losses, a significant number of charges against the Surplus Fund take place three years after the date of injury; the count of charges increases up until this point and decreases after this point.

Performance Assessment

We assessed the performance of the Ohio workers' compensation system compared to these four overarching themes: Effectiveness & Efficiency; Financial Strength & Stability; Transparency; and Ohio Economic Impact. Each broad study element (Ohio Benefit Structure; Pricing Process; Cost Controls; Financial Provisions; and Actuarial Department Functions & Resources) is reviewed with these themes in mind to develop a performance assessment of the current state. Our performance assessment is made on each element in the context of its contribution to supporting the overarching themes.

For these performance assessments, the following scoring method applies:

	Strongly supports system performance
	Supports system performance
	Some support for system performance
	Some opportunity for system performance change/enhancement
	Significant opportunity for system performance change/enhancement

Based on this scoring method, here is the performance assessment for the Handicap Reimbursement Program:

	Effectiveness & Efficiency	Financial Strength & Security	Transparency	Ohio Economic Impact
Overall Handicap Reimbursement Program				

Recommendations

The following recommendations address the opportunities identified above, listed in prioritized order:

Terminate the Handicap Reimbursement Program. Ohio BWC should consider terminating the Handicap Reimbursement Program because of its cost to the Surplus Fund, obsolescence relative to the ADA, and its current primary use as a cost-containment strategy for employers is inefficient. The program costs BWC approximately \$2 million per year in charges to the Surplus Fund and overhead expenses and its original purpose of encouraging the hiring and retention of handicapped workers is largely irrelevant because of the ADA. Our analysis does not indicate that employers with handicapped workers require the economic relief provided by the Handicap Reimbursement Program. The costs savings from charges against the Surplus Fund and operational costs of the program can be distributed across all employers in the form of lower premiums or invested in other loss control/claims management efforts that would reduce employers' claim costs. Additionally, eliminating the program will free up employers' resources working on the administrative aspects of the Handicap Reimbursement Program and can be utilized in more prospective loss control efforts.

If the Handicap Program cannot be eliminated, the following modifications are recommended:

Exclude Arthritis as a Handicap. Remove arthritis from the list of handicapped conditions. Because of the overwhelming majority of arthritis handicap claims, arthritis is not a distinguishing characteristic in determining if a handicapped condition exists. Additionally, removing arthritis as a handicap will reduce charges to the Statutory Surplus Fund by approximately \$1.6 million on average per year. The costs savings from charges against the Surplus Fund and operational costs of the program can be distributed across all employers in the form of lower premiums or invested in other loss control/claims management efforts that would reduce employers' claim costs. Additionally, eliminating arthritis as a handicap will free up employers' resources working on the administrative aspects of the Handicap Reimbursement Program and can be utilized in more prospective loss control efforts.

Require That Existing Conditions be the Proximate Cause of a More Severe Second Injury. Ohio BWC should more strictly qualify the definition of a handicapped condition so that the employer can clearly demonstrate that the previous condition was the proximate cause of the second injury and/or that the second injury was more severe than otherwise would have been the case. This is to prevent the granting of reimbursements for pre-existing conditions that did not contribute to the second injury.

Reduce the Lag Time Allowed for Handicap Reimbursement. Based on the review of Ohio BWC data and interviews with BWC attorneys, for many employers handicap reimbursement is a retrospective process by which employee's pre-existing conditions are researched after a claim occurs in an attempt to eliminate the claim from the employer's experience. The permissible lag time of 5-6 years potentially allows employers to build a case that an employer had a pre-existing condition, while in fact the condition marginally qualifies and does not align with the intended purpose of the Handicap Reimbursement Program.

Impact

The impact (high, moderate, or low) of these recommendations as they relate to the overarching themes is shown in the following table:

	Effectiveness & Efficiency	Financial Strength & Stability	Transparency	Ohio Economic Impact
Terminate the Handicap Reimbursement Program				

Legend

High Impact	Moderate Impact	Low Impact	No Impact	Adverse Impact

The Deloitte Consulting team is available to clarify or amplify any issues raised in this report. We express our appreciation for BWC process constituents' time, effort, and guidance in completing this integral task of our comprehensive study.

Appendix A – Deliverable Matrix

Group 3 Study Elements

Pricing Process
Premium Rate Calculation – State Agencies
Programs
1) Handicap Reimbursement Program

Cost Controls
MCOs
1) Medical Payments to Providers
Retrospective Rating Program
Effectiveness of Rates in Reducing Ohio Claims
Effect of Saving Money on Ohio Workplace Safety
Safety Grant Programs
Safety and Hygiene Program

Pricing Process Areas

Premium Rate Calculation	Tasks Involved
<p>Premium Rate Calculation – State Agencies</p>	<p>2. Review and make written recommendations with regard to public employer state agency premium rate calculations. The public employer state agencies rates are calculated on a terminal funding basis. This review would include but would not be limited to an analysis of the rating program including the loss information and other data used including the reliability and quality of the data, the payroll, the trending factors, the amount of overage and shortage each year. This analysis should compare the BWC's rating calculation to industry standards and the Actuarial Standards of Practice promulgated by the actuarial standards board of the American Academy of Actuaries.</p>
Programs	Tasks Involved
<p>Handicap Reimbursement Program*</p> <p>*Originally scheduled to be part of the Group 4 deliverables.</p>	<p>17. Evaluate the effectiveness of the handicap reimbursement program to reward employers with pre-existing conditions. This evaluation should determine if the program is cost effective and compare the program to other states.</p>

Cost Control Areas

MCOs	Tasks Involved
1) MCOs	30. Conduct a study on the effectiveness of the use of Managed Care Organizations (MCO) in the workers' compensation system. This analysis would include an evaluation of the effectiveness of the use of MCOs, the payments to MCOs relative to the benefits received, the advantages and disadvantages of the MCO approach, the medical cost trends since MCO implementation, and a comparison to industry standards.
2) Medical Payment to Providers	25. Conduct a study on the medical payments to providers in Ohio and provide a comparison to industry peers. This study should recommend changes/improvements to the BWC's medical payment structure to be in line with industry standards.
Retrospective Rating Program	Tasks Involved
Retrospective Rating Program	4. Review and make written recommendations with regard to the retrospective rating program. This analysis would include a review of the selection criteria for the program, minimum premium percentages, the cost effectiveness of the program, and an overview of the program.
Effectiveness of Rates in Reducing Ohio Claims	Tasks Involved
Effectiveness of Rates in Reducing Ohio Claims	33. Study the effects of BWC's rates in reducing the number and severity of workers' compensation claims in this state.
Effect of Saving Money on Ohio Workplace Safety	Tasks Involved
Effect of Saving Money on Ohio Workplace Safety	34. Study the effect that saving money has had on safety in the workplace in this state.
Safety Grant Programs	Tasks Involved
Safety Grant Programs	9. Review and make written recommendations with regard to the safety grant programs. This study should include an evaluation on the reduction of claims and costs through safety intervention, the criteria for selection of employers to assist, the application of the safety and hygiene assessment and a comparison to industry standards. The evaluations should study the effect of workers compensation rates in reducing the number and severity of workers' compensation claims in the state.

Cost Control Areas - continued

Safety and Hygiene Program	Tasks Involved
Safety and Hygiene Program	<p>29. Conduct a study on the effectiveness of the safety and hygiene programs. This study should include an evaluation on the reduction of claims and costs through safety intervention, the criteria for selection of employers to assist, the application of the safety and hygiene assessment and a comparison to industry standards. The evaluation should study the effect of workers' compensation rates in reducing the number and severity of workers' compensation claims in the state</p>

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